A.F.R.

(6c)

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

WRIT PETITION NO. 1942 OF 2003

PETITIONER		Lakhan Lal Sahu, Son of Shri Indal Ram Sahu, aged about 56 ½ years, working as Secretary, Krishi Upaj Mandi Samiti, Durg, Resident of Subhashnagar, behind Shiv Mandir Gali, Durg, District-Durg (C.G.).
	- Versus-	
RESPONDENTS	1.	State of Chhattisgarh, Through Secretary, Department of Agriculture, DKS Building, Mantralaya, Raipur, District-Raipur (C.G.)
	2.	The Managing Director, Chhattisgarh State Agricultural Marketing Board, Old Ganj Mandi premises, Raipur, District-Raipur (C.G.).
	3.	Joint Director, Chhattisgarh State Agricultural Marketing Board, Old Ganj Mandi Premises, Raipur, District-Raipur (C.G.).
	4.	Shri J.L.Sawanni, Secretary, Krishi Upaj Mandi Samiti, Kharasiya, District- Raigarh (C.G.).

POST FOR ORDER ON 12th August, 2003.

Sd/-
L.C.BHADOO
Judge

(61)

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O R D E R

(13th August, 2003)

By Justice L. C. Bhadoo.

1. The petitioner by filing this writ petition under Article 226/227 of the Constitution of India has challenged the order dated 27.6.2002 Annexure P/1 by which he has been transferred from the post of Secretary, Krishi Upaj Mandi Samiti (for short 'Samiti') Durg and has been attached with the Head Quarter of the Mandi Board at Raipur.

2. The petitioner's petition is that he worked as Secretary of the Samiti at Rajnandgaon for about a year i.e. from February 2002 to February 2003, he was transferred to Kawardha where he remained for five days and again he was transferred and posted at Durg. As the petitioner will be retiring in the month of November, 2004 i.e. within less than two years he made a representation on 20th January, 2003 Annexure P/2 requesting that as per the Govt. policy he should be posted in his home district or nearby district in order to settle his family and also to make arrangements for the marriage of children.

3. During the short tenure of the petitioner as Secretary of the Samiti Durg the petitioner has done excellent work and he nearly wiped out the middlemen from the transaction. The farmers of the areas are happy and therefore working of the Samiti is going on smoothly. The Chairperson of the Samiti wants to have her own say in the matter and is encouraging the middlemen, which is known to all the members of Samiti. Recently during his tenure the income of the Samiti has been increased. But the President is bent upon harassing the Secretary as she had done with the earlier Secretaries posted in the Samiti at Durg. 10 Samiti secretaries have been changed during the period of three years. The Vice President and other members of the Samiti have submitted a representation before the State Govt. Annexure P/4.

4. The General Administration Department of the erstwhile State of Madhya Pradesh had issued a transfer policy Annexure P/5 in which the instructions were issued that an employee who is going to be retired within two years on

attaining the age of supcrannuation, normally should not be transferred. If transfer is inevitable then he should be transferred to his home district or nearby place. The petitioner's home district is Durg where he is presently posted and his hometown is Balod, which falls in district Durg. Therefore the petitioner ought not to have been transferred by the impugned order, which is contrary to the Govt. Policy and guidelines. Within a period of 2½ years the petitioner has been transferred thrice. It is therefore prayed that the Court may call for the entire record relating to transfer of the petitioner and to quash the impugned order dt. 27.6.2003 Annexure P/1.

5. Return has been filed on behalf of the Respondents No. 2 and 3 in which it has been mentioned that transfer is an incidence of service. The petitioner has been transferred on the ground of administrative exigency, unless the transfer is vitiated with malafides the court cannot interfere in it.

6. Though the Govt. has issued instructions that ordinarily an employee nearing retirement should not be transferred away from his hometown but in every case these instructions are not legally enforceable. More over the terminology of the instructions are that ordinarily an employee should not be transferred where he is nearing the age of retirement. The transfer order of the petitioner for his transfer from Rajnandgaon to Kawardha was issued on the ground of administrative exigency and in compliance of transfer order the petitioner joined at Kawardha on 29th January 2003. Thereafter the petitioner demanded to be transferred to the Samiti at Durg on his own expense therefore vide order dt.

7.2.2003 the earlier order dt. 29.1.2003 was amended and the petitioner was posted at Durg.

7. As far as petitioner's claim that during his tenure as Secretary of the Samiti Durg no middleman was working, it is submitted that no middlemen were working either before or are working after the transfer of the petitioner. The petitioner was Incharge of the post of Secretary from 10.2.2003 to 28.6.2003. During this period the total arrival of agricultural produce in the Samiti was 98191 quintals whereas in the previous year during this period the total arrival was 222055 quintals. Therefore it is clear that during the tenure of the petitioner the arrivals have decreased.

8. The answering respondents have no knowledge about the petitioner being harassed by the Chairperson of the Samiti. The petitioner has been transferred to Raipur, which is merely 40 k.m. away from Durg, therefore this transfer cannot be termed as contrary to the Govt. guidelines and policy. The petitioner has been attached with the Rajya Krishi Vipdan Board i.e. Head Quarter of the Board. The petitioner's transfer has not been effected due to the political interference. The allegations in the petition are baseless. On the contrary the petitioner has been transferred on account of the administrative exigency. The petition is liable to be dismissed.

9. Return has also been filed on behalf of the Respondent No.4 in which it has been submitted that transfer has been made on the ground of administrative exigency. The Respondent No.4 was working as Secretary of the Samiti Kharasia since last three years and his transfer was mandatory and on

transferred place he has already joined on 1st July 2003. Other reply is almost identical to the reply of the respondents No.2 and 3.

10. I have heard Shri Prashant Mishra, learned counsel for the petitioner, Shri Ranbir Singh, learned counsel for the Respondents No. 2 and 3, and Shri Manindra Shrivastava, learned counsel for the Respondent No.4.

11. The Hon'ble Apex Court has laid down law in number of judgments regarding exercise of judicial review in the matter of transfer of an officer/officials. In the matter of Rajendra Roy Vs. Union of India & another, reported in (1993) 1 SCC 148 the Hon'ble Apex Court has held that inference of, must be based on firm foundation of facts pleaded and established and not merely on insinuations and vague allegations-when post is transferable and no representation against transfer on the ground of personal hardship made – challenge to transfer on the basis of some vague allegations of mala fides not sustainable. In the case of Union of India & others Vs. S.L.Abbas reported in (1993) 4 SCC 357 the Hon'ble Apex Court has held that transfer is an incident of Govt. Service. Who should be transferred where, is a matter for appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it. While ordering transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to exigencies of administration. The

Hon'ble Apex Court again in the matter of N. K. Singh Vs. Union of India & others reported in (1994) 6 SCC 98 held that interference justified only in cases of mala fides or infraction of any professed norm or principle – where career prospects remain unaffected and no detriment is caused, challenge to transfer must be eschewed. The Court is not required to make a roving enquiry into the allegations and should simply look into the record only.

12. Therefore, in view of the above principles enunciated in the matter of transfer of a public servant, transfer is an incidence of service and when transfers are made on the ground of administrative exigencies, which are not against the statutory provisions, transfer cannot be challenged and no judicial review can be sought against such transfers. In other words transfer order can be challenged if transfer is made on account of bias, malafide and if the same is contrary to the statutory rules. The petitioner is required to allege these grounds specifically and to substantiate and establish his assertion. The challenge on mere vague allegations and personal hardship is not sustainable. The Court is not required to go into minute things and interfere into the transfers, which are made on administrative exigencies. Further while exercising power of judicial review the court is not required to undertake roving enquiry.

13. In view of the above guidelines if we look into the case of the petitioner, he has challenged his transfer mainly on two grounds (i) that he is going to be retired within a period of two years therefore as per the Govt. policy and guidelines he must remain posted at his home district i.e. Durg (ii) that he

has been transferred thrice within a short span. In order to appreciate petitioner's claim if we look into the guidelines issued by the State of Madhya Pradesh the relevant guideline is No.13, a perusal of which reveals that generally officers and servants who are going to be retired within a period of two years should not be transferred and if their transfer is essential/inevitable as far as possible they should be posted in their home district or nearby home district. If we look into this provision it seems that the Govt. issued this guideline in order to allow the employee to settle his family and to make all necessary arrangements at the fag end of his career to lead his retired life peacefully. This is a guideline for the authorities to take it to the consideration while issuing transfer orders and not a statutory rule. These guidelines are meant for the authority to adjust the employees as far as possible as has been said by the Hon'ble Supreme Court unless statutory provisions are violated an employee cannot challenge his transfer only on the ground that some guidelines are not being followed. Guidelines does not confer upon Govt. employee a legally enforceable right and whole time of a Govt. Servant is at the disposal of the Govt., which pays him, and he may be employed in any manner required by the proper authority. These guidelines cannot over ride the administrative exigency, which must remain paramount consideration for transfer of an employee therefore; these guidelines are not enforceable as of right.

14. As far as question of keeping an employee at a particular place for a particular term is concerned this is also a guideline that normally any Govt. employee should not be

transferred for a period of 3 years for the reason that frequent transfers creates so many hardships i.e. the personal inconvenience as well as family problems of an employee are increased by the frequent transfers and if the employees cannot live peacefully then the employer cannot have legitimate expectation from the employee that he should work effectively and efficiently. Therefore, there is a reason behind fixing tenure of posting but the security of tenure many a times cannot be adhered to on the ground of administrative exigency; for example on account of the promotions of certain employees, on account of the disciplinary actions against employees, on account of certain objectives are to be achieved by the Govt. and which certain employees are able to achieve looking to their past performance and track record. These are the few areas on which the authorities are required to transfer the employee and these are broader areas in which normally the transfers can take place and if on these grounds few employees are transferred then other employees are also to be affected.

15. Other reason behind security of tenure is that frequent transfers not only affect the efficiency and performance of an employee but it also affects the smooth functioning of the system and over and above financial burden is also increased on the public exchequer and that can be called as wastage of public money.

16. At the same time if an employee makes a representation, the authority is required to consider his representation in a objective manner and on consideration of representation if the authority reached a conclusion that grievance of

employee is genuine and same can be taken care of while making transfer then he should be adjusted, of course subject to the administrative exigency which is the ultimate paramount objective to meet.

17. Looking to the petitioner's case in fact on his representation Annexure P/2 he was adjusted and posted in his home district but it appears that he could not continue there on the ground of administrative exigency and he was transferred and attached with the headquarter and that too he has been posted at a distance of only 40 k.m. away from Durg which cannot be in any way termed as punitive transfer. More over Raipur and Durg are twin cities and lot of employees and other businessman daily up and down in both cities. If we take examples of cities like Delhi, Calcutta & Bombay, the Govt. employees as well as other employees of the private sectors daily travel more than 100–200 k.m., even more than that, in many cases to attend their duties. Personal difficulties of an employee cannot be given precedence over the administrative exigency, as transfer is an incidence of service. No employee can claim a particular place of posting as of right. Therefore, the petitioner's petition on this ground has no merit.

18. Now coming to the question of transfer of the petitioner in a short span of period, from Kawardha to Durg transfer of the petitioner was made on his own request therefore he cannot blame anyone for that. Even Kawardha is also adjoining to Durg and Rajnandgaon.

19. As far as transfer of the petitioner is concerned on the ground of malafide and harassment of the petitioner by the

Chairperson of the Samiti. It is apparent that bald and vague allegations have been levelled in this regard. The petitioner has not been able to establish/substantiate his allegations. Moreover, the Chairperson of the Samiti has not been made a party and the allegations against her without joining her a party and giving her an opportunity to rebut these allegations, it is not appropriate to place reliance on these allegations. On the other hand the respondents have submitted that the transfer of the petitioner has been made on the administrative exigency and not any other ground. Return of the respondents shows that during the tenure of the petitioner as Secretary of the Samiti at Durg, even arrival of agricultural produce decreased.

20. For the foregoing reasons I do not find any force in this petition and the same is liable to be dismissed and it is dismissed.

Sd/-
L.C.BHADOO
Judge

Thakur